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Issue and Debate

Balancing Citizens' Need to K
Government's Need to Crea

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How much is a citizen entitled to know about how the Federal Government works? Which of its records may the Government justifiably keep secret?

Since 1974, the answers to these questions have been specified in the Freedom of Information Act, widely described as a landmark piece of legislation that put teeth into a decade-long effort to insure that most Government files would be open to the public. In the last several months the Reagan Administration and a group of senators have proposed broad changes in the act to create new restrictions on the availability of certain information, particularly in areas of law enforcement, intelligence and business regulation.

Those proposals have started a new debate over the proper balance between demands for openness and the need for secrecy, which often conflict. At the heart of the debate is a philosophic disagreement over the validity of what one Government study of the act termed "the presumption that the Government and the information of government belong to the people."

The Background

Like other organizations, governments find it is easier when their decisions are not subject to challenge or second-guessing. Keeping private the documents on which decisions are based helps reduce the challenges.

Since the earliest years of the republic, rules about what kinds of government records the public could ask for and get evolved from laws on administrative practice that were primarily designed to help accomplish the agencies' "housekeeping" tasks. Those rules tended to legitimize the bureaucratic impulse to say "no."

As the Federal Government grew after World War II, Congress increasingly discovered it needed access to administrative files. In 1958, legislation sponsored by Representative John Moss, Democrat of California, and Senator Thomas Hennings, Democrat of Missouri, shifted the emphasis toward broadened availability of records. But many departments continued to follow the more restrictive Administrative Procedures Act, which allowed withholding of documents when secrecy was "in the public interest" or "for g

In 1966, Congress enacted the Freedom of Information Act, widely referred to by its initials, F.O.I.A. For the first time, this act said that any person was entitled to most identifiable records without having to give a reason. While it established certain categories of exempt records, the act reversed for most of the bureaucracy a long-held presumption, placing on the Government agency the burden of proving that it was entitled to withhold a requested file.

Eight years later Congress, sensitized by the Watergate scandals to the possibility that Government officials might use the stamp of "national security" to conceal records of illegal or venal behavior, amended the act to create new protections against the arbitrary closing of files. The amendments were enacted over the veto of President Ford.

For Restrictions

Even before President Reagan's election, a variety of Government agencies and private groups began asking for changes in the act. Part of the pressure came from the intelligence community, the Central Intelligence, National Security and Defense Intelligence agencies in particular. In Senate subcommittee hearings and in public speeches, they have argued that potential informants abroad are discouraged from cooperating because they believe the act means the agencies cannot keep their names secret.

They do not contend that secrets have routinely been disclosed, but rather that there is a "perception" abroad that such disclosures are inevitable with the law written as it is. That position has been bolstered by various books and magazines based on public records that have disclosed the names of American agents abroad. To reverse the apprehensions abroad, the agencies say, their records should be exempted entirely from any forced disclosure. This is a position the Administration supports but it is scheduled to be debated separately from the other proposals to change the act.

The act permits judicial review of decisions to withhold security files, a provision that would be limited under the Administration proposals. In the most recent well-publicized case in-

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Service and the Drug Enforcement Administration, contend that criminals have used the act to get records on investigations. They say that the individual records are innocuous, but that they can be put together in ways that hint at investigative methods and the identities of informers. William H. Webster, the director of the F.B.I., said Joanne Chesimard, a convicted murderer and leader of militants, had obtained 1,700 pages of documents that may have helped her elude recapture after her escape from a New Jersey prison.

The agencies say the Attorney General should decide whether to withhold records on terrorism, organized crime and foreign counter-intelligence and that they should be allowed to keep secret records that would "tend" to disclose the identity of sources.

In recent years, business has become the most frequent user of the act, with domestic and foreign companies asking for files of agencies such as the Food and Drug Administration and the Federal Trade Commission to find out what their competitors are doing. The law "was not intended to provide the K.G.B. or a German industrialist with information about the United States," said Jonathan C. Rose, Assistant Attorney General for legal policy. The Administration bill would exempt commercial or financial information if disclosure "may impair" business interests.

All the agencies complain that the volume of requests puts heavy and costly demands on their staffs even before a decision can be made on the propriety of releasing the files. The bill would allow the agencies to charge more for searching and duplicating files, a change that is supported by the opponents of broader amendments.

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